

ESTTA Tracking number: **ESTTA297508**

Filing date: **07/27/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Red Hen Bread LLC		
Entity	limited liability company	Citizenship	Illinois
Address	250 N. Western Avenue Chicago, IL 60612 UNITED STATES		

Attorney information	Kathryn Jennison Shultz Jennison & Shultz, P.C. 2001 Jefferson Davis Highway, Suite 1102 Arlington, VA 22202 UNITED STATES kjs4jennisonlaw@aol.com
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Registration Subject to Cancellation

Registration No	3614763	Registration date	05/05/2009
Registrant	Oeding, Norm 15076 NW 180th St Newton, KS 67114 UNITED STATES		

Goods/Services Subject to Cancellation


Class 030. First Use: 2005/08/29 First Use In Commerce: 2005/08/29
All goods and services in the class are cancelled, namely: fresh, baked bread products, namely, bread, buns, bagels, bread rolls and baguettes

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77707868	Application Date	04/06/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RED HEN BREAD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1996/12/09 First Use In Commerce: 1996/12/09 Bakery products, namely, bread, buns, bagels, bread rolls, baguettes, croissants, cookies, muffins, scones, danish, tarts and assorted pastries
Attachments	77707868#TMSN.jpeg (1 page)(bytes) cancellation petition LITTLE RED HEN BAKERY 07-27-2009.pdf (5 pages)(129036 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kathryn Jennison Shultz/
Name	Kathryn Jennison Shultz
Date	07/27/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 3,614,763
For the mark LITTLE RED HEN BAKERY
Date registered May 5, 2009
International Class 30

RED HEN BREAD LLC,	:	
	:	
Petitioner,	:	Cancellation No.
	:	
v.	:	
	:	
NORM OEDING,	:	
	:	
<u>Registrant.</u>	:	

Hon. Commissioner for Trademarks
Attention: Box TTAB – Fee
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION TO CANCEL

Red Hen Bread LLC, an Illinois limited liability company having its principal place of business at 250 N. Western Avenue, Chicago, Illinois 60612, believes that it is or will be damaged by Registration No. 3,614,763 and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. The registrant Norm Oeding obtained a federal registration for the mark LITTLE RED HEN BAKERY (“Registrant’s Mark) for “fresh, baked bread products, namely, bread, buns, bagels, bread rolls and baguettes” in Class 30, claiming an August 29, 2005, first date of use and an August 29, 2005, first date of use in commerce. This registration is identified by Registration No. 3,614,763 with a May 5, 2009 registration date.

2. Petitioner has adopted and continuously used the trademark RED HEN BREAD since at least as early as December 9, 1996 to the present, in connection with bakery products, namely, bread, buns, bagels, bread rolls, baguettes, croissants, cookies, muffins, scones, Danish, tarts and assorted pastries.
3. Petitioner has filed an application to register the mark RED HEN BREAD (“Petitioner’s Mark”) for “bakery products, namely, bread, buns, bagels, bread rolls, baguettes, croissants, cookies, muffins, scones, Danish, tarts and assorted pastries” in International Class 30. This application, which is based on the petitioner’s use of this trademark in commerce in connection with the named goods in Class 30 since at least as early as December 9, 1996, was filed April 6, 2009, and is identified by Serial No. 77/707,868. The U.S. Patent and Trademark Office has refused registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because “of a likelihood of confusion with the mark in U.S. Registration No. 3,614,763 as to be likely to cause confusion, to cause mistake, or to deceive as to the source of the services.”
4. There is no issue as to priority of use. Petitioner has continuously used its RED HEN BREAD trademark since at least as early as December 9, 1996, which is prior to the March 16, 2008 filing date for U.S. Trademark Application Serial No. 77/423,259, which matured into Registration No. 3,614,763, and prior to the August 29, 2005 first date of use alleged by the Registrant.

5. Petitioner has expended considerable effort and expense in promoting its RED HEN BREAD trademark and the goods sold under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the goods of Petitioner by such mark.
6. The Registrant's Mark and the Petitioner's Mark contain the term "RED HEN."
7. Bread, buns, bagels, bread rolls and baguettes are listed in the identification of goods for Registration No. 3,614,763 and for Trademark Application Serial No. 77/707,868.
8. In view of the similarities of the respective marks and the related nature of the goods of the respective parties, the Registrant's mark LITTLE RED HEN BAKERY so resembles Petitioner's mark RED HEN BREAD previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.
9. Purchasers are likely to consider the goods of the Registrant advertised and promoted under the mark LITTLE RED HEN BAKERY as emanating from or associated with Petitioner, and purchase such services as those of the Petitioner. Any such confusion in trade inevitably would result in loss of sales to the Petitioner. Furthermore, any defect, objection or fault found with Registrant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Petitioner has established for its RED HEN BREAD goods.

10. The continued existence of U.S. Registration No. 3,614,763 casts a cloud upon petitioner's right to continue to use, register and expand the use of its RED HEN BREAD trademark, all to the great injury of petitioner.

WHEREFORE, Petitioner deems that it is or will be damaged by Registration No. 3,614,763 and petitions for cancellation thereof.

In accordance with 37 C.F.R. §2.6(a)(16), the petition is payment in the amount of \$300.00 to cover the filing fee is submitted. You are authorized to deduct the required amount from Deposit Account No. 503210.

Respectfully submitted,

RED HEN BAKERY LLC

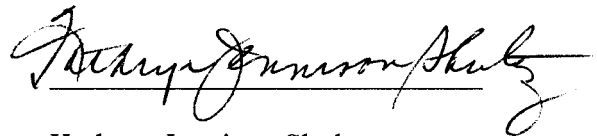
Date: July 27, 2009

By: 

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Carl E. Jennison
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Arlington, Virginia 22202
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that true and complete copy of the foregoing Petition to Cancel was served upon Registrant, by forwarding same via First Class Mail, postage prepaid, to Norm Oeding, 15076 N.W. 180th Street, Newton, Kansas 67114, this 27th day of July, 2009.

A handwritten signature in black ink, reading "Kathryn Jennison Shultz", written over a horizontal line.

Kathryn Jennison Shultz